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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

STEVEN WILLIAMS,
Plaintiff,

CASE NO. 1:09-cv-00118-OWW-SMS PC
APPEAL NO. 10-15339

v.

L. L. SCHULTIES, et al.,
Defendants.

**NOTICE AND ORDER FINDING THAT
PLAINTIFF IS NOT ENTITLED TO
PROCEED IN FORMA PAUPERIS ON THE
APPEAL FILED FEBRUARY 12, 2010**

**ORDER DIRECTING CLERK'S OFFICE
TO SERVE COPY OF ORDER ON NINTH
CIRCUIT**

Plaintiff Steven Williams is a prisoner who was proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On January 25, 2010, the Court dismissed this action, with prejudice, based on Plaintiff's failure to state a claim upon which relief may be granted and judgment was entered. (Docs. 23, 24.) Plaintiff filed a notice of appeal on February 12, 2010. (Doc. 25.)

Pursuant to the Federal Rules of Appellate Procedure,

A party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless:
(A) the district court - before or after the notice of appeal is filed - certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding;
or
(B) a statute provides otherwise.

Fed. R. App. P. 24(a)(3).

The district clerk must immediately notify the parties and the court of appeals when

1 the district court does any of the following:
2 (A) denies a motion to proceed on appeal in forma pauperis;
3 (B) certifies that the appeal is not taken in good faith; or
4 (C) finds that the party is not otherwise entitled to proceed in forma pauperis.

5 Fed. R. App. P. 24(a)(4).

6 Because Plaintiff was proceeding in forma pauperis in this action in the district court,
7 Plaintiff is entitled to proceed in forma pauperis on appeal unless the Court makes a finding to the
8 contrary. For the reason that follows, the Court finds that Plaintiff is not entitled to proceed in forma
9 pauperis on his appeal filed February 12, 2010.

10 28 U.S.C. § 1915 governs proceedings in forma pauperis. Section 1915(g) provides that “[i]n
11 no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more
12 prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court
13 of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state
14 a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious
15 physical injury.” Plaintiff became subject to section 1915(g) on January 25, 2010, when his third
16 action was dismissed for failure to state a claim upon which relief may be granted.¹ Because Plaintiff
17 is subject to section 1915(g) and does not meet the imminent danger exception, Plaintiff is not
18 entitled to proceed in forma pauperis on appeal. Fed. R. App. P. 24(a)(4)(C).

19 Based on the foregoing, it is HEREBY ORDERED that:

- 20 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff is not entitled to proceed in forma pauperis
21 on the appeal filed on February 12, 2010;
- 22 2. Pursuant to Federal Rule of Appellate Procedure 24(a)(4)(C), this order serves as
23 notice to the parties and the United States Court of Appeals for the Ninth Circuit of
24 the finding that Plaintiff is not entitled to proceed in forma pauperis for this appeal;
25 and

26 ///

27 ¹ The Court takes judicial notice of the following cases: 1:08-cv-01187-DGC Williams v. Sullivan, et al.,
28 (E.D. Cal.) (dismissed 07/01/2009 for failure to state a claim), 2:03-cv-02044-LKK-JFM Williams v. Sandham, et
al., (E.D. Cal.) (dismissed 08/07/2009 for failure to state a claim), and 1:09-cv-00118-OWW-SMS Williams v.
Schulties, et al., (E.D. Cal.) (dismissed 01/25/2010 for failure to state a claim).

1 3. The Clerk of the Court shall serve a copy of this order on Plaintiff and the United
2 States Court of Appeals for the Ninth Circuit.

3
4 IT IS SO ORDERED.

5 **Dated: March 1, 2010**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE